

Wisconsin Pollutant Discharge Elimination System (WPDES) General Permit for Storm Water Associated with Land Disturbing Construction Activity, Permit No. WI-S067831-5: Fact Sheet – July 2016

This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

The landowner of a construction site where one acre or more of land will be disturbed must apply for and obtain coverage under the WPDES General Permit for Storm Water Associated with Land Disturbing Construction Activity (Permit No. WI-S067831-5) from the Wisconsin Department of Natural Resources (Department). This general permit regulates the discharges of pollutants to waters of the state as provided in s. 283.33, Wis. Stats., and subch. III of ch. NR 216, Wis. Adm. Code.

The Department is proposing to reissue the WPDES General Permit for Storm Water Associated with Land Disturbing Construction Activity (“general permit”). This state-wide general permit authorizes storm water discharges to waters of the state from construction sites. The general permit requires the permittee to implement best management practices to control storm water runoff in accordance with site-specific erosion control and storm water management plans to reduce sediment and other pollutants from entering waters of the state. Waters of the state includes surface waters, groundwater, and wetlands.

This factsheet highlights and summarizes the most significant changes from the previous version of the general permit. This factsheet does not describe all conditions of the general permits as many of them are self-explanatory.

The Department's Authority to Issue WPDES Permits

The Federal Water Pollution Control Act of 1972 (Public Law 92-500), also called the Clean Water Act, requires that all point sources discharging pollutants to waters of the U.S. obtain a wastewater discharge permit. These permits specify the conditions under which wastewater can be discharged so that water quality standards for receiving waters are met. In 1974, the United States Environmental Protection Agency (USEPA) delegated the authority for issuing these permits in the State of Wisconsin to the Department. The Department exercises its permitting authority through the WPDES permit program authorized under ch. 283, Stats.

The Department has the authority to issue two types of permits for the discharge of pollutants to waters of the state: 1) Individual WPDES permits and 2) general WPDES permits. The Department issues individual WPDES permits when the interaction between pollutant discharges and water quality is complex. These permits require careful scrutiny and must be tailored to the specific conditions of the facility with the discharge. The Department issues general WPDES permits to broad classes of dischargers where environmental protection can be achieved through a set of general provisions that apply to all dischargers in that category. The WPDES General Permit for Storm Water Associated with Land Disturbing Construction Activity is a general permit.

The Department's Regulation of Storm Water Associated with Land Disturbing Construction Activity

In Wisconsin, WPDES permits are issued by the Department with federal oversight from the USEPA. The Department is responsible for the issuance, reissuance, modification, and enforcement of all WPDES permits issued for discharges into the waters of the state, except discharges occurring in Indian Country which are regulated directly by the USEPA. No person may legally discharge to waters of the state without a WPDES permit issued under this authority.

In 1987, Congress amended the Clean Water Act, authorizing a national program of comprehensive storm water pollution control for municipal separate storm sewer systems, certain industries, and construction sites. In 1993, ch. 147, Stats., (now ch. 283, Stats.) was amended to include storm water as a "point source" discharge and to require that the Department promulgate administrative rules for permitting the discharge of storm water. As a result, the Department created ch. NR 216, Wis. Adm. Code, for permitting storm water discharges from certain municipalities that own or operate municipal separate storm sewer systems, storm water discharges associated with industrial activity, and storm water discharges associated with land disturbing construction activity. These rules set the framework for the Department to issue this general permit for the discharge of storm water associated with land disturbing construction activity.

Under ss. NR 216.43 and 216.44, Wis. Adm. Code, the landowner of a construction site where land disturbing construction activities will disturb one acre or more of land is required to obtain general permit coverage by submitting a completed Notice of Intent (NOI) to the Department. The NOI shall be submitted to the Department at least 14 working days prior to the commencement of any land disturbing construction activities on forms available from the Department and shall include the appropriate application fee.

General Permit Requirements

Chapter NR 216, Wis. Adm. Code, defines the conditions under which storm water associated with land disturbing construction activity can be discharged so that waters of the state will be protected. The general permit contains the requirements as established in subch. III of ch. NR 216, Wis. Adm. Code.

The reissued general permit will be used by the Department to authorize and regulate storm water discharges from both new and currently permitted eligible construction sites. Unless notified by the Department to the contrary, the effective date of coverage under the general permit is 14 working days after an applicant's complete NOI has been received by the Department. General permit coverage continues until submittal of a Notice of Termination for a project and terminates upon written confirmation by the Department. The maximum period of general permit coverage for any project is limited to 3 years per NOI. Therefore, general permit coverage terminates unless another NOI for the original project, including the application fee, is submitted to retain coverage under the general permit or a reissued version of the general permit.

The general permit will not be used to provide permit coverage to a storm water discharge from Indian activities within Indian Country. Permit coverage is required from the USEPA for construction site storm water discharges within Indian Country. Information on such permitting is available at:

<https://www.epa.gov/npdes/npdes-stormwater-program>.

In summary, the general permit requires landowners of regulated construction sites to:

- Develop and implement erosion control and post-construction storm water management plans in accordance with subch. III of ch. NR 216, Wis. Adm. Code, and the applicable performance standards of ch. NR 151, Wis. Adm. Code.
- Electronically submit a complete NOI, also known as the Water Resources Application for Project Permits (WRAPP), to the Department at least 14 working days prior to the commencement of land disturbing construction activities.
- Conduct inspections of implemented erosion and sediment best management practices at least weekly and after a rainfall event of 0.5 inches or greater, and repair or replace erosion and sediment best management practices as necessary.
- For any permanent storm water management structures, develop a long-term storm water maintenance agreement.

- Submit a complete Notice of Termination to the Department after the construction site has undergone final stabilization.

Summary of Key Changes from the Previous Version of the General Permit

This reissued general permit, Permit No. WI-S067831-5, will replace the previous version of the general permit, Permit No. WI-S067831-4. Key changes to the general permit include the following (numbering system used below corresponds with the sections in the general permit):

1.1 Eligibility: Language has been changed in section 1.1.1.1 to be consistent with the expectations for dewatering activity that may be covered under the general permit by adding a reference to the Department's sediment control dewatering technical standard 1061. Also, this section clarifies the discharges from dewatering wells regulated under ch. NR 812, Wis. Adm. Code, are not covered by the general permit.

1.2 Exclusions: A definition of Indian Country has been added to the note under section 1.2.1. Section 1.2.2 includes language that a landowner applying for permit coverage shall provide information to the Department with the application documenting whether wetlands are present in the project area and how the presence or absence of wetlands was determined. Information on the Department's wetland screening and delineation procedures is available at <http://dnr.wi.gov/topic/stormwater/construction/>. Section 1.2.6 has been added to indicate that storm water discharges from transportation activity carried out under the direction and supervision of the Wisconsin Department of Transportation are not eligible for coverage under the general permit. State law directs the Department to issue a distinct general permit that authorizes the Department of Transportation to discharge storm water from the site of a transportation activity.

1.3 Authorization: Language throughout the general permit referring to an authorized local program has been removed and consolidated under in section 1.6. Section 1.3.3 has been deleted since under the Clean Water Act the Department may not defer to other programs for the regulation of storm water discharges.

1.6 Authorized Local Program: (The language regarding "Public Access to Information including Notices of Intent" in section 1.6 of the previous version of the general permit has been deleted. The general permit is a regulatory document that applies to the permittee. Information on the public availability of NOIs is on the Department's website at <http://dnr.wi.gov/topic/stormwater/construction/data.html>. This section in the proposed general permit contains new language regarding an authorized local program. Information on an authorized local program has been consolidated into this section to address concerns raised by USEPA. Currently, Waukesha County is the only municipality with an authorized local program conditionally-approved by the Department. Until further notice, the Department will not approve any other municipal authorized local program.

2.1 Application Procedures: Language has been added to section 2.1.1 stating that an applicant is to submit the NOI electronically through the Department's electronic application process. Under certain circumstances where an applicant has no computer capability, the Department may accept a paper version of the NOI application on a case-by-case basis. Information of the Department's electronic application process webpage is available at: <http://dnr.wi.gov/topic/Stormwater/construction/forms.html>.

2.9 Minimum Storm Water Control Design, Installation, and Maintenance Requirements: Section 2.9 has been added to identify the minimum storm water control requirements, where storm water controls are to minimize the discharge of pollutants in storm water through appropriate design, installation, and maintenance of the controls as required in the erosion and sediment control and post-construction storm water management plans.

3.1 Erosion Control Plan Requirements: Section 3.1.6.1 has been amended to reference the 5 tons per acre per year sediment performance standard and provide information to applicants on the Construction Site Soil Loss and Sediment Discharge Calculation Guidance to assist with estimating soil loss and sediment discharge. The guidance is available on the Department's website at: <http://dnr.wi.gov/topic/stormwater/publications.html>.

3.2 Storm Water Management Plan Requirements: Section 3.2.8 has been added to the general permit to provide direction to permittees about establishing vegetation for final stabilization using permanent seeding as specified in the Department's seeding technical standard 1059.

3.3 Amendments: Language in re-number section 3.3.1.2 has been added to specify that if there is a change in the sequence, schedule, or phasing of construction at the construction site which has a reasonable potential to cause an exceedance of the 5 tons per acre per year sediment performance standard, then the permittee shall amend the erosion control plan as appropriate.

5. General Conditions: Section 5 references the general conditions in s. NR 205.07(1), (3), and (5), Wis. Adm. Code, that apply to activities covered under the general permit, except for the conditions in s. NR 205.07(1)(n) and NR 205.07(3)(b), Wis. Adm. Code. Also, under s. NR 205.08(9), Wis. Adm. Code, dischargers covered under a general permit are not required to submit an application for reissuance. Sections 5.1 through 5.7 are specific general conditions contained in the general permit that apply to covered activities.

Additional Resources

The following sources of additional information may be obtained from the Department's internet site as indicated to assist landowners and consultants.

- Construction site storm water permits information:
<http://dnr.wi.gov/topic/stormwater/construction/>
- Construction site storm water permit forms:
<http://dnr.wi.gov/topic/Stormwater/construction/forms.html>
- Construction site erosion & sediment control technical standards:
http://dnr.wi.gov/topic/stormwater/standards/const_standards.html
- Storm water post-construction technical standards:
http://dnr.wi.gov/topic/stormwater/standards/postconst_standards.html
- Storm water publications/guidance: <http://dnr.wi.gov/topic/stormwater/publications.html>

Permit Drafter

Suzan Limberg – WT/3, Wisconsin DNR, 101 S. Webster St., P.O. Box 7921, Madison, WI 53707-7921; (608) 266-9278; suzan.limberg@wisconsin.gov.